

**S & C Security, Inc. and International Union,  
United Plant Guard Workers of America  
(UPGWA). Case 5-RC-12048**

30 August 1984

**DECISION AND DIRECTION OF  
SECOND ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held 7 and 8 October 1983 and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 26 for and 24 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings and recommendations only to the extent consistent herewith.

The Employer's objection alleged, *inter alia*, that the Union and/or its agents made improper payments to employees to induce them to vote for the Union. The hearing officer concluded that the evidence was insufficient to establish that the Union paid, or even promised to pay, employee Heath for his services as an election observer on 7 October 1983. We agree that the evidence is insufficient to establish that the Union paid, or expressly promised to pay, Heath. Nevertheless we conclude, contrary to the hearing officer, that the election should be set aside for the following reasons.<sup>1</sup>

It is undisputed that Heath received about \$50 from the Union for serving 2 hours as one of its election observers in the previous election held in 1982. Prior to the election in 1982 a union representative told Heath he would be paid and, after the election, Heath submitted a voucher and was paid about \$50. Prior to the 1983 election Heath was approached by Chambers, the employee who had initially contacted the Union in 1983, who asked him if he wanted to serve as an observer. Both Heath and Chambers testified that Heath was contacted in 1983 because he had been an observer in 1982, and that payment of money for the 1983 election was not mentioned. Thus Heath was unaware of any changes in the previous year's arrangement. Just as he had in 1982, Heath arranged to come in on his day off and serve for 2 hours as an observer for the 1983 election.

<sup>1</sup> In view of our decision herein, we find it unnecessary to pass on the portion of the Employer's objection which alleges that the Union and/or its agents interfered with the election by informing other unit employees of the alleged payments.

As noted by the hearing officer, in addition to his conversation with Chambers Heath spoke with two other employees and a supervisor about his acting as a union observer. Heath testified that just prior to the election, while employee Fife and he were riding to work in Fife's car, he asked Fife if he would like to be an observer. Fife had been borrowing money from Heath and according to Heath appeared to be "a little hurting for money." Heath testified he told Fife that Fife would get paid for being an observer. On the morning of the election Heath discussed his acting as an observer with employee Wicker. Heath testified that he told Wicker he had been paid the previous year, by the Union, to serve as its observer. Similarly, Heath testified that in a discussion sometime after the 1983 election he told Supervisor Jones about being paid for serving as an observer in the 1982 election. Further, in testimony not noted by the hearing officer, Heath, when asked by the hearing officer whether he believed he would be paid to serve as an election observer in 1983, admitted that he believed he would get some money since he had "observed last year and was paid. It was a natural assumption I should get paid this time," although Heath further stated he was unsure of the amount he would be paid. We find it clear based on all his testimony, and in view of the fact that Heath was paid about \$50 for serving as an observer in the prior election, that Heath reasonably anticipated he would be paid for serving as an observer in the 1983 election.

We further find that the Union, through Chambers, led Heath to reasonably believe he would be paid. In this regard we find that Chambers, who solicited Heath to serve as an observer, was acting as the Union's agent at least for that limited purpose. Thus, Chambers testified that Schooley, a union official, asked him to "line up" observers and left the designation of the observers to Chambers. When Chambers asked Heath to serve as an observer, it is clear that the issue of payment was not mentioned. Given the facts that the Union paid Heath about \$50 for serving as an observer in the 1982 election, that Heath's service in both elections was for 2 hours on his day off, and the absence of any statement to Heath by the Union that its practice with respect to payments to observers would be different in 1983, we conclude that Heath reasonably was left with the impression that he would again be paid as an observer as he had been in the prior election.

In *Easco Tools*, 248 NLRB 700 (1980), the Board set aside an election where two union observers, a number sufficient to affect the outcome of the election, were paid 8 hours at \$5 per hour, 75 cents an hour more than their regular rate, to work about 1-

1/2 hours. In the present case it has not been established that the Union paid, or expressly promised to pay, Heath for his services, but this difference from *Easco* is not significant where, as here, the observer reasonably was led to believe that he would be paid about \$50 for acting as an observer for 2 hours as he had been under the previous arrangement with the Union, and when, as here, the sum, if paid, would have been grossly disproportionate to the observer's normal hourly rate of \$6.48. It is questionable whether in these circumstances Heath, whose vote is sufficient to affect the outcome of the election, could have voted independently without a sense of obligation to vote for the Union. As the Board held in *Easco*, "The matter is not free from doubt. But precisely because of that, we believe the integrity of our election processes is better served by directing a new election in this case."<sup>2</sup> Accordingly, we sustain the Employer's objection and we shall direct a second election.

[Direction of Second Election omitted from publication.]

<sup>2</sup> *Easco Tools*, supra at 701.

MEMBER DENNIS, dissenting.

I disagree with the majority opinion. I consider the evidence insufficient to establish that the Union made improper payments to unit employees, as the objections allege.

Testimony at the hearing focused on whether the Union made payments to employee Heath, who acted as an election observer. My colleagues in the majority concede that the "evidence is insufficient to establish that the Union paid, or expressly promised to pay, Heath" and that "it is clear that the issue of payment was not mentioned" when employee Chambers asked Heath to serve as an observer. Yet, my colleagues set aside the election on their conclusion that Heath reasonably anticipated he would be paid as he had been in an earlier election and, consequently, it is questionable whether he could have voted independently. I cannot agree to set aside the election on such a basis. In my view Heath's expectations, even if reasonable, cannot substitute for evidence of union conduct.<sup>1</sup>

<sup>1</sup> Absent evidence that the Union made or promised payments, I do not reach the question whether the payment Heath anticipated would have been improper if offered. I also do not consider the part of the objections that the majority does not pass upon.